

## § 900.126

U.S.C. 276c and 18 U.S.C. 874),” for Federally assisted construction subagreements;

(5) “The Indian tribe or tribal organization will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234),” which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;

(6) “The Indian tribe or tribal organization will comply with all applicable Federal environmental laws, regulations, and Executive Orders;”

(7) “The Indian tribe or tribal organization will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting the components or potential components of the national wild and scenic rivers system;”

(8) “The Indian tribe or tribal organization will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).”

(d) The Indian tribe or tribal organization and the Secretary will both make a good faith effort to identify any other applicable Federal laws, Executive Orders, or regulations applicable to the contract, share them with the other party, and refer to them in the construction contract. The parties will make a good faith effort to identify tribal laws, ordinances, and resolutions which may affect either party in the performance of the contract.

### **§ 900.126 Shall a construction contract proposal incorporate provisions of Federal construction guidelines and manuals?**

Each agency may provide or the Indian tribe or tribal organization may request Federal construction guidelines and manuals for consideration by the Indian tribe or tribal organization in the preparation of its contract proposal. If tribal construction procedures, standards and methods (includ-

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ing national, regional, State, or tribal building codes or construction industry standards) are consistent with or exceed applicable Federal standards, the Secretary shall accept the tribally proposed standards.

### **§ 900.127 What can be included in the Indian tribe or tribal organization's contract budget?**

(a) The costs incurred will vary depending on which phase (see § 900.112) of the construction process the Indian tribe or tribal organization is conducting and the type of contract that will be used. The total amount awarded under a construction contract shall reflect an overall fair and reasonable price to the parties (see § 900.129).

(b) Costs for activities under this subpart that have not been billed, allocated, or recovered under a contract issued under section 108 of the Act should be included.

(c) The Indian tribe or tribal organization's budget should include the cost elements that reflect an overall fair and reasonable price. These costs include:

(1) The reasonable costs to the Indian tribe or tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of the Act and any other applicable law;

(2) The costs of preparing the contract proposal and supporting cost data;

(3) The costs associated with auditing the general and administrative costs of the Indian tribe or tribal organization associated with the management of the construction contract; and

(4) In cases where the Indian tribe or tribal organization is submitting a fixed-price construction contract:

(i) The reasonable costs to the Indian tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract;

(ii) The ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract, local market conditions, and other relevant considerations.